

N.D.A.G. Letter to Tornes (March 4, 1988)

March 4, 1988

Mr. Gary L. Tornes, Director
Central Personnel Division
Office of Management & Budget
State Capitol
Bismarck ND 58505

Dear Mr. Tornes:

Thank you for your letter of October 16, 1987, in which you request an opinion concerning the veterans' preference statute. I apologize for taking so long to respond to your request.

In your letter you state that the Central Personnel Division's current interpretation of N.D.C.C. § 37-19.1-01(2) is that an individual must first meet the definition of a veteran prior to being considered eligible for a disabled veterans' preference. You request an Attorney General's opinion on whether an individual first must meet the definition of veteran, which means a wartime veteran as defined in N.D.C.C. § 37-01-40(2), in order to receive the ten point disabled veterans' preference.

N.D.C.C. § 37-19.1-01(2) defines "disabled veteran" as "a veteran who is found to be entitled to a service-connected disability rating as determined by the United States veterans' administration." N.D.C.C. § 37-19.1-01(5) defines "veteran" as "a wartime veteran as defined in subsection 2 of section 37-01-40." N.D.C.C. § 37-19.1-02(3) provides "[a] disabled veteran is entitled to a preference superior to that given other veterans," and N.D.C.C. § 37-19.1-02(4)(d) provides "the examiner shall add five points for a nondisabled veteran and ten points for a disabled veteran to the examination grade of the applicant."

The veterans' preference statute provides that "'disabled veteran' means a veteran who is found to be entitled to a service-connected disability rating as determined by the United States veterans' administration." N.D.C.C. § 37-19.1-01(2) (emphasis supplied). The statute also defines veteran as a wartime veteran as defined in N.D.C.C. § 37-01-40(2). N.D.C.C. § 37-19.1-01(5). The statute also provides that the definitions contained in N.D.C.C. § 37-19.1-01 are to be used in N.D.C.C. ch. 37-19.1. N.D.C.C. § 37-19.1-01.

In construing a statutory provision every word, clause, and sentence of a statute is to be given meaning and effect. Garner Pub. School Dist. No. 10 v. Golden Valley County Comm. for Reorg. of School Dists., 334 N.W. 665, 670 (N.D. 1983). The definition for the term "disabled veteran" includes the word "veteran." The rules of statutory construction require that this word be given meaning and effect. Id.

The definition section of N.D.C.C. ch. 37-19.1 defines veteran as a wartime veteran.

Therefore, based upon the language of the statute and principles of statutory construction, it is my opinion that, for the purposes of N.D.C.C. ch. 37-19.1, a disabled veteran is a wartime veteran, as defined in N.D.C.C. § 37-01-40, who is found to be entitled to a service-connected disability rating as determined by the United States Veterans' Administration. It follows then, that an individual must meet the definition of a wartime veteran as defined in N.D.C.C. § 37-01-40(2) in order to receive the ten point disabled veterans' preference.

This interpretation of the veterans' preference statute is also consistent with the legislative history of the statute. The present veterans' preference statute was enacted in 1973. See 1973 N.D. Sess. Laws ch. 282 (codified at N.D.C.C. ch. 37-19.1). The 1973 legislation provided that "[v]eteran shall be defined in subsection 1 of section 37-01-40." Id. at § 1. The veterans' preference statute was amended in 1985 and the definition of veteran was changed to: "[v]eteran' means a wartime veteran as defined in subsection 2 of section 37-01-40." 1985 N.D. Sess. Laws ch. 397, § 28 (codified at N.D.C.C. § 37-19.1-01(5)).

The Report of the 1985 Legislative Council indicates that the veterans' preference legislation introduced by the Legislative Audit and Fiscal Review Committee and which was passed by the Legislature, would continue to provide public employment preferences only to wartime veterans. See N.D. Leg. Council Rep., 49th Leg., at 150 (1985). Testimony before the 1985 Legislature also indicated that the veterans' benefits legislation did not provide the same benefits to peacetime and wartime veterans with respect to public employment. See Hearings on S. 2089 before the House Social Services and Veterans' Affairs Committee 49th Leg. (1985) (testimony of Milt Kane).

Therefore, it is my opinion, based upon the language and legislative history of the veterans' preference statute, that a disabled veteran must be a wartime veteran as defined in N.D.C.C. § 37-01-40(2) in order to be entitled to the disabled veterans' ten-point preference.

If you have any further questions on this matter, please feel free to contact me.

Sincerely,

Nicholas J. Spaeth

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